

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOBBY D. COLBERT,

Petitioner,

RONALD HAYNES,

Respondent.

CASE NO. 19-cv-00467-RAJ

ORDER

**I. INTRODUCTION**

THIS MATTER comes before the Ninth Circuit’s remand “to the district court for the limited purpose of granting or denying a certificate of appealability[.]” Dkts. # 52–53. The Court now addresses whether Petitioner Bobby D. Colbert’s Motions for Relief from Judgment (Dkts. # 37, 46) which were denied by this Court (Dkts. # 43, 48) are entitled to a certificate of appealability. For the reasons set forth below, the Court **DECLINES** to issue a certificate of appealability for both motions.

## II. BACKGROUND

On July 8, 2020, this Court dismissed Colbert's Petition for lack of subject matter jurisdiction, finding it successive under 28 U.S.C § 2244(a). Dkt. # 33. On January 15, 2025, this Court denied Colbert's Motion for Relief from Judgment as successive under 28 U.S.C § 2244(a) because identical issues were raised in a matter pending before the Ninth Circuit.<sup>1</sup> Dkt. # 43. On February 25, 2025, this Court denied Colbert's Second Motion for Relief from Judgment because it asserted meritless arguments attacking a Report and Recommendation ("R&R") that was never adopted by this Court. Dkt. # 48.

## III. LEGAL STANDARD

A Court may issue a certificate of appealability of its denial of a Petitioner's Rule 60(b) motions if the Petitioner could show "that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying section 2255 motion or section 2254 petition states a valid claim of the denial of a constitutional right." *Martinez v. Shinn*, 33 F.4th 1254, 1261 (9th Cir. 2022). "To meet this standard, the petitioner 'must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further.'" *Id.* (quoting *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (emphasis in original)).

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<sup>1</sup> See *Colbert v. McDonald*, No. 08-cv-0870-RSL, Dkt. # 68 (W.D. Wash. Aug. 8, 2024).

#### IV. DISCUSSION

##### A. First Motion for Relief from Judgment, Dkt. # 37

Without approval from the Ninth Circuit, this Court does not have jurisdiction to consider successive habeas corpus petitions. The Court finds no fairly debatable issue that Colbert's petition was "clearly successive" under 28 U.S.C. § 2244(b), given the numerous challenges to his conviction<sup>2</sup> and his pending appeal on the same issues. Therefore, Petitioner was not entitled to relief in a Rule 60(b) motion. Even if Petitioner's arguments were properly presented in a Rule 60(b) motion, reasonable jurists would not find it debatable whether this Court abused its discretion in interpreting his habeas petition as a successive challenge. Therefore, the Court declines to issue a certificate of appealability.

##### B. Second Motion for Relief from Judgment, Dkt. # 46

Petitioner does not meet Rule 60(b)'s standard for his Second Motion for Relief from Judgment. Petitioner's motion does not present any plausible basis for relief. As explained in the Court's Order (Dkt. # 48) the motion is meritless, and mostly based on an R&R this Court never adopted. Therefore, reasonable jurists would not 'find it debatable whether the [Court] abused its discretion in denying' Petitioner's Rule 60 motion." *Salerno v. Schriro*, 2022 WL 16950219, at \*2 (D. Ariz. Nov. 15, 2022) (quoting *Martinez*, 33 F.4th at 1261). Therefore, the Court declines to issue a certificate of appealability.

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<sup>2</sup> In addition to *Colbert v. McDonald*, No. 08-cv-0870-RSL, Petitioner has filed at least nine other federal habeas petitions challenging his conviction. See *Colbert v. Sinclair*, C11-0076-RSM; *Colbert v. Glebe*, C12-0563-RAJ; *Colbert v. Gilbert*, C16-1247-JLR; *Colbert v. Gilbert*, C16-1663-RSL; *Colbert v. Haynes*, C18-1350-RSM, *Colbert v. Haynes*, C19-0467-RAJ; *Colbert v. Bennett*, C23-1122-JNW; *Colbert v. Bennett*, C24-0889-LK; and *Colbert v. Bennett*, 24-1002-DGE-TLF.

**V. CONCLUSION**

This Court did not abuse its discretion in denying Petitioner's Rule 60(b) motions. Accordingly, the Court hereby finds and ORDERS:

- (1) The Court DENIES a Certificate of Appealability for the January 15, 2025, Order Denying Petitioner's Motion for Relief from Judgment under Rule 60(b).
- (2) The Court DENIES a Certificate of Appealability for the February 25, 2025, Order Denying Petitioner's Motion for Relief from Judgment under Rule 60(b).
- (3) The Clerk is directed to forward a copy of this Order to Petitioner and the Ninth Circuit Court of Appeals in Case No. 25-530 and Case No. 25-1853.

Dated this 14th day of April, 2025.

A handwritten signature in black ink, reading "Richard A. Jones", written over a horizontal line.

The Honorable Richard A. Jones  
United States District Judge